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AWU – AMWU Submission

# Submission To The Senate Economics Legislation Committee Inquiry into the Exposure Draft of the Australian Jobs Bill 2013

April 2013



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## OVERVIEW

The Australian Manufacturing Workers' Union (AMWU) and the Australian Workers' Union (AWU) represent almost 250,000 workers in virtually every industry, occupation and region across Australia.

Our members are employed in industries where their job and income security depends on firms successfully exporting products or competing against imported goods. Our members have also been among the 130,000 manufacturing sector workers who have lost their job since 2008. That is why productivity, international competitiveness and fair trade have always been core business for our two unions.

Australia's regime for Australian Industry Participation is very much a part of that core business. Australia is presently in the centre of a resources and investment boom with capital projects that are some of the largest in the history of the country. Providing a full and fair opportunity for Australian industry to compete for work flowing from this investment is absolutely vital to the ongoing viability of Australia's manufacturing sector.

Appendix A contains more detailed legislative amendments already submitted. This more detailed submission is focused on the context of the legislation and why this legislation is fundamental to the future of the Australian economy.

### **This submission will focus on:**

1. The case for immediate action.
2. The getting competitive and getting access agenda.
3. Appendix A includes the joint union submission made on the Exposure Draft of the proposed bill.



## **1. THE CASE FOR IMMEDIATE ACTION - Why Australia needs an Australian Jobs Bill immediately.**

In the policy statement *A Plan for Australian Jobs: The Australian Government's Industry and Innovation Statement*, the Federal government has committed to three key measures to assist manufacturing industry including:

- Support Australian firms to win more work in Australia.
- Support Australian industry to win new business abroad.
- Help SMEs to grow into global mid-sized firms and create new jobs.

The first of these measures is built around a new agenda for Australian Industry Participation (AIP) and a more connected agenda for helping industry get access and get competitive. The draft exposure legislation is largely about the getting access side of the agenda.

In assessing the draft exposure legislation and the supporting legislative instruments to give affect to it as well as the existing legislation and regulations for AIP (Government procurement, EPBS etc.) this joint submission identifies a number of issues that we wish to place on the record for consideration. Appendix A to this submission includes our proposed draft amendments to the Legislation and the reason why we believe they are appropriate. We have submitted these proposed changes as part of the consultation process initiated by the Government on its draft legislation.

However we wish to go much further in this submission to the Senate Economics Legislation Committee. It is our submission that this legislation is absolutely fundamental to the entire agenda that has been established for what we call the "Getting Competitive and Getting Access Agenda" for Australian Manufacturing. It is vital that the Senate understands the intricate network of connections between this legislation and a wide range of supporting measures that are designed to help manufacturing survive and thrive as it adjusts to the high cost environment brought on by the resources boom and the over valued Australian dollar.

These policies do not exist in isolation or in separate silos. They are vitally interconnected and were considered in extreme detail and with immense care over the 18 months within the Prime Ministers Taskforce into Manufacturing. To strike out



one element would be to fatally damage the policy framework and thus potentially fatally damage the future prospects for the Australian manufacturing sector and the broader Australian economy which it underpins.

This understanding of the context of the legislation, its connection to other supporting measures as part of the “Getting Competitive and Getting Access Agenda” is fundamental to understanding why for the AMWU, AWU and the trade union movement more generally argues that:

**The Australian manufacturing sector needs this legislation to be passed and passed *immediately*.**

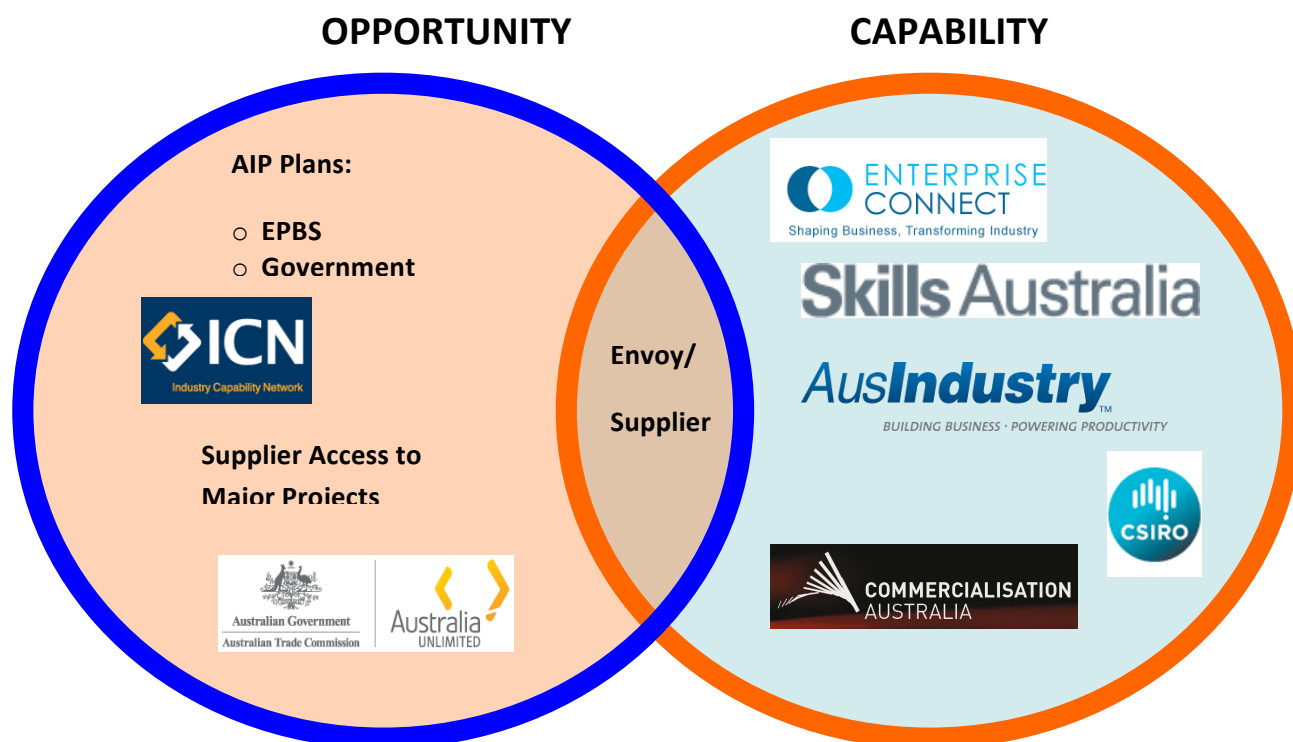
**This legislation is *essential* in securing the future of manufacturing sector and the millions of Australian jobs it directly and indirectly supports.**



## 2. THE GETTING COMPETITIVE AND GETTING ACCESS AGENDA

The modern history and connections between various Government initiatives in the policy space linking Australian Industry Participation (AIP) and strengthening Australian industry competitiveness and capability are outlined in detail the Regulation Review Statement accompanying the AIP Legislation.

They are best summarised in the figure below taken from the Regulation Impact Statement.





This figure demonstrates the how strong AIP is vital in providing the business case for the transformative competitiveness agenda that Australian manufacturing will need to undertake in the coming years. This competitiveness agenda will deal with changes in business models, global competition and new cost environments.

## **Operating in a high cost environment**

The 'getting competitive and getting access' agenda is particularly important at this time.

Australian manufacturing, and indeed the Australian economy are at a crucial juncture.

On the one hand the high dollar has been the main factor transforming Australia into a relatively high cost location and is seriously eroding the competitiveness of many firms and industries.

On the other hand this is occurring at the same time that changes in engineering/construction techniques (such as modularisation) and procurement practices (the greater use of EPCM's with established global supply chains) in major projects is preventing many Australian suppliers from having a full, fair and reasonable opportunity to win business at home and abroad.

These pressures are placing acute pressure on business viability in the near term. However in order to adjust businesses will require medium run and long run changes in business practices, innovations and investments that are impossible without survival through periods of acute stress that they now find themselves in.

In order to address ongoing competitiveness issues into the future that are on the long-run supply side, manufacturing firms need immediate stimulus through improved demand for Australian goods.<sup>1</sup>

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<sup>1</sup> Australian industry has an issue regarding the age and scale of capital stock. Other supporting mechanisms available to support more Australian steel fabrication, for example, being used in major projects, could include accelerated depreciation and this warrants serious consideration.



Fortunately Australia is in the midst of a record level of investment, particularly in the booming resources sector. This investment has the potential to underpin the competitiveness agenda that will see manufacturing thrive into the future.

This approach linking AIP on the one hand and building capability and competitiveness on the other hand was strongly endorsed by manufacturing business and union leaders who prepared the Report of the Non Government Members of the Prime Minister's Manufacturing Taskforce. The message of these manufacturing leaders is highlighted in the Box below:

*"Rather than suggesting pejoratively that one factor or another is more "to blame" for Australia's status as a high cost location the real challenge is to create an environment and culture that facilitates the change process required for Australian manufacturing to become more internationally competitive. As suggested by many leaders not just in Australia, but in most other nations as well "this requires a business environment that supports continual innovation in products, processes and management". It also requires an understanding of what is required to build better manufacturing businesses and what company leaders, their senior management team and their employees can do to adjust to challenging times...*

*Australia should use its very large economic projects to leverage outcomes – both because this is the fastest route to lifting standards in technology, management and design, and because this helps to capture national value from these projects. With appropriate linkages to other sectors this can help firms adapt to current cyclical pressures. For the benefits from "full, fair and reasonable access" to materialise, there will need to be greater rigour and transparency applied including the provision of a breakdown of contestable items preferably with AIPP plans developed at the environment impact stage of projects in the future. Standards should not be specified in a way that unreasonably utilises foreign competitor specifications thus limiting the access of Australian suppliers.*

*The scale and breadth of our opportunities in Australia's resources sector are simply too great to let pass. To steadily bridge the gap between resource sector productivity requirements and the capabilities of the manufacturing sector, practical pathways – based on existing opportunities – need to be developed. This will require collaborations that empower the resources industry as a lead customer, while recognising the ultimate need to build stronger supply chain linkages with Australian manufacturing. This could involve modest incentives from the Commonwealth to*



*underwrite such collaborations – enabling developmental risks to be shared, relationships to be built and the basis for stronger future supply chains strengthened. What is needed here is the commitment of all parties.*

*While this will be an ongoing challenge, action needs to start now.*

*The identification of initial projects that can trial this approach should be happening now. So the non-government members of the Taskforce recommend expanding the Buy Australian at Home and Abroad initiatives by selecting large Australian infrastructure projects and specific export opportunities, then working in concert with the Supplier Advocate program, the Industry Capability Network and Austrade to compete for those projects and with Enterprise Connect to build the capability of potential manufacturing suppliers. This is needed in both the short and longer term.”*

**Source: PM’s Manufacturing Taskforce: Report of the Non-Government Members August 2012 pp60-61**

This clear articulation of the getting competitive and getting access agenda by the Manufacturing leaders was also focused on the “institutional engineering” required to get “better bang for buck” for those involved in both facilitating access through AIP and those facilitating building capabilities and competitiveness.

As the leaders explained it:

*“The non-government members of the Taskforce also recommend that Enterprise Connect (EC) be upgraded, its funding to support manufacturing firms be significantly increased and its relationships and connections with other agencies be formalised. This will help EC exercise greater leverage and capacity in assisting manufacturing firms meet the competitiveness and productivity challenges they face...To achieve this, the Government should carefully consider the option of merging or more closely integrating the operations of Enterprise Connect and ICNL Ltd. The Minister for Industry and Innovation and the Minister for Trade and Competitiveness should play a more active role in the prioritisation of joint activity between Austrade, Enterprise Connect and the Industry Capability network....”*

**Importantly greater integration with ICNL and a new approach to co-operation with the state ICN network would help leverage up the rich architecture of resources that exist (supply advocates, national sector managers, the formal and tacit knowledge of the staff of the ICN and Enterprise Connect networks)**





**This architecture is not currently delivering the high level impact it is capable of delivering.**

**It currently lacks strategic co-ordination and the kind of collaboration that helps industry win more international business opportunities by connecting up the getting access and getting competitive functions of trade and industry policy. Australia simply must improve its performance in this vital area.**

A reconfigured Enterprise Connect would ideally involve:

- Continuing to be the front door for business support services for all SMEs.
- Working with other agencies interacting with SMEs (such as Austrade, Commercialisation Australia, Supplier Advocates and state-based providers) to ensure that there is 'no wrong door' for businesses seeking support.
- Complementing the Manufacturing Technology Innovation Centre (MTIC) and the Industrial Transformation Research Hubs, and providing input to those measures that emphasise the applied knowledge needs of SMEs.
- Reprioritising time, support and services towards those SMEs it assesses as having the highest potential to value add, subject to those firms demonstrating a commitment and potential to grow.
- Actively promoting and prompting industry supply chain initiatives, such as under its Supply Chain 21 (SC21) offering where primes and SME suppliers work together to lift quality and productivity, with scope for modest incentives to de-risk experimental collaboration for large firms and SMEs.
- Continuing to refer to Austrade, Commercialisation Australia and other specialist providers those firms that need more specialist advice on expanding into international markets or financing development.
- Connecting SMEs to specialist providers and policies to support access to technology, managerial and creative capabilities (through linkages to programs such as Leadership 21 and Ulysses).
- Identify and work with industries facing transition in demanding value chains to transform their capabilities to align with the needs of related value chains.

The objective of these proposed changes is to ensure that the existing suite of activities within Enterprise Connect that support manufacturing activities are enhanced and attract additional resources so that it can help drive the systematic upgrading of manufacturing SME capability and management skills, better supply chain links and performance...

Better interaction between Enterprise Connect, its manufacturing clients and the research sector is also essential. As manufacturing firms upgrade their capabilities, they need to plug into different types and sources of assistance at different times. They face real transaction costs, so Enterprise Connect and related services need to



continue to ensure they address these transaction costs. The Taskforce strongly believes that Government support needs to be joined up and client focused, not transaction/KPI focused. When it is joined up and client focused, it can deliver enormous value to SMEs at very little cost.”(Source PM’s Taskforce opt citation pp77)

It is our submission that the Senate needs to fully comprehend how fully integrated the getting competitive and getting access agendas are and how this AIP legislation gives effect to that.

**Without this legislation and with, for example, significant cuts to Enterprise Connect and other supporting mechanisms like supply advocates and national sector managers the getting access and getting competitive agenda would be derailed. This would seriously jeopardise the future of manufacturing and put thousands of jobs at risk.**

In brief, the following points summarise why the legislation and the supporting mechanisms are essential to the getting competitive and getting access agenda.

- 1) The Regulation Impact Statement has made a strong case for introducing this legislation including the following facts:
  - (a) Too many firms are missing out on contracts at a time when there is considerable excess capacity...”the trend towards greater use of EPCMs and established global supply chains by investors can create significant impediments to Australian industry participation...(in many cases) Australian companies are not known to overseas based EPCM’s or not part of established global supply chains.
  - (b) This is happening at the same time that the number of projects with EPBS AIP plans is declining. The new arrangements proposed would also have the benefit of extending AIP out of the resources sector to capture projects in other industries, particularly infrastructure.
  - (c) There are currently 23 projects above a project threshold size of \$500 million and with over \$32 billion in proposed expenditure that are not covered by AIP plans.
  - (d) Independent experts such as Dr Martin West have pointed out that “It needs to be ensured that all major projects produce AIPP’s”.
  - (e) There is evidence to suggest that many project developers sometimes, rarely or never take into account guidelines regarding the use of Australian suppliers.
  - (f) There is evidence to suggest that major projects that do utilize AIP plans benefit both themselves and their suppliers. “Surveys since 2003 showed



that over 70 per cent of respondents agreed that their AIP plan had a positive impact on procurement outcomes for their company. Similarly, 71% agreed that their AIP plan also had a positive impact for their Australian producers; over 75% agreed that their AIP plans had a positive regional development impact and over 90 per cent agreed AIP plans had a positive employment and skill acquisition impact on the Australian economy through their suppliers.

- (g) In its review of EPBS Access Economics concluded “Feedback from consultations indicated that there are a range of benefits and the scheme has had a favourable impact in breaking down some preconceived notions of local industry capabilities. To the extent the scheme helps disseminate market knowledge and information on Australian industry capability at a relatively low cost, this part of the scheme has the potential to provide worthwhile and ongoing benefits,
- (h) Project developers have also acknowledged the benefits of AIP plans in developing better procurement management practices and capability to access a broader range of Australian suppliers.
- (i) The gross cost to firms participating in AIP plans is likely to average around \$100,000 per annum per project with the potential for net benefits because of the improvements identified above

Accordingly the RIS concludes that: “Legislating AIP plans can be expected to improve outcomes for a larger number of projects and firms.”<sup>2</sup>

2) The review AMWU and AWU conducted about the role of The AIP Authority suggests it is better placed than any other mechanism to achieve the following linkages between the getting access agenda and the getting competitive agenda

- a) The Authority is best placed to allocate the time and resources associated with the industry supply advocates and national sector managers. It would have the flexibility to move resources into industries and activities that needed such resources and pull them out of industries and activities where the mission was accomplished or under performance suggested resources should be redeployed.
- b) Point (a) above will allow a far more strategic deployment of resources. It also gives an agency with better resources and greater flexibility the opportunity to help “One Network” to emerge out of the State and Territory ICN offices. The National ICN office has already indicated its preparedness to merge its operations into the authority subject to the establishment of the Authority and

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<sup>2</sup> Regulation Impact Statement page 46



- its mandate being capable of being delivered to provide a better more cohesive and well resourced ICN network.
- c) The new leadership teams within the Authority and Enterprise Connect will be best placed to work together to ensure that firms that fail to win project work get proper de-briefings from project developers and then are supported by Enterprise Connect with the business advisory services available to help lift the productive performance of firms so they are better placed to win work next time. KPI's reflecting this in the work of the Authority, Enterprise Connect and other relevant agencies will allow transparency and accountability when assessments are made of the getting access and getting competitive agenda.
  - d) The new leadership teams within the Authority and the Australian Trade Commission will be best placed to identify and help assist and provide introductions to local firms who prove their success in major projects in Australia and look to do so offshore as part of global supply chains.
  - e) Point (b) and (c) above will help the Authority as it interfaces with State and Territory agencies who are seeking to do similar things. An appropriate division of labour and avoidance of duplication and demarcation disputes will best be served with the AIP Authority model and backed up with the renewal of the National AIP 2001 Framework Agreement currently being negotiated.
  - f) The AMWU and AWU have recommended an amendment to the draft exposure legislation that would see a Chief Procurement Engineer appointed to the board of the AIP.

### **The role of the Chief Procurement Engineer (CPE)**

One of the five to seven member AIP Board should be the AIP Chief Procurement Engineer whose principle job (in addition to board duties) is to liaise with a project developer where so instructed by the Board and advise the Authority and its board of the suitability of undertakings given in draft AIP plans in relation to matters such as standards and appropriate sized contestable packages consistent with the object of the legislation to give local suppliers full, fair and reasonable opportunities.

The Chief Procurement Engineers recommendation will be central to the approval/non approval of draft AIP plans and may result in independent consultant evaluations being undertaken where required to test the veracity of project developer claims. Similarly in ensuring compliance with AIP undertakings, the CPE's recommendation will be a central consideration in Board decisions. The Chief Procurement Engineer will have several decades of experience working in the procurement offices of major global project



developers or EPCM's around the world. The CPE will also help ensure that the staff of the Authority, over time, better reflects staff with engineering procurement experience.

As was pointed out to us in the preparing of this submission one of the strengths of the Canadian Maritime Provinces policy (known as benefit plans) for AIP in the oil and gas sector is that the relevant policy authorities who deal with the global oil and gas firms developing projects have large contingents of procurement experts and engineers to help validate the veracity of developers preference for certain standards and package sizes consistent with legislation requiring full and fair opportunity for local suppliers.

The AMWU and AWU believe that over time the professional competent engineering procurement culture that develops, embracing as it does the principle of full, fair and reasonable opportunity will make a very significant contribution to the getting competitive and getting access culture.

- 3) Further to the above, the AMWU and AWU have proposed a series of amendments to the draft exposure legislation (set out in Appendix A) that we believe will strengthen the getting competitive and getting access agenda and AIP legislation in the following ways.
  - (a) Broaden the object of the legislation so that “full fair and reasonable opportunity is at the center of the legislative intent
  - (b) Reduce the project threshold to \$250 million, allow projects of national significance below the threshold to be nominated for AIP treatment in special circumstances defined by cabinet and allow voluntary access to the AIP regime for projects under \$50 million who so wish to participate.
  - (c) Amend Part 2 of the legislation so that summaries of draft AIP plans are placed on the Authority's website for input from the community prior to the Authority determining whether an AIP plan is supported.
  - (d) Strengthen the legislation and supporting regulation in regards to standards and size of project packages that allow full fair and reasonable participation by local suppliers.
  - (e) Ensure compliance requirements and penalties for non compliance are appropriate
  - (f) Ensure a stronger and larger “governance” board is established including the Chief Procurement Engineers position.



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In our assessment these changes as outlined in Appendix A will contribute significantly to the getting access and getting competitive agenda that is so essential to the future of manufacturing and job security for ordinary working people, their families and communities.

We commend our submission to the Senate



## APPENDIX A

### Exposure Draft: Australian Jobs Bill 2013

#### **A Bill for an Act about Australian industry participation plans for major projects, and for other purposes.**

1. The object of this legislation for AIP should be amended as highlighted by the underlined portion below:

“The main object of this act is to support the creation and retention of Australian jobs by requiring Australian Industry Participation Plans from major project developers that ensure Australian entities have full fair and reasonable opportunities to bid for the supply of goods and services to the project”.

2. It is central to an efficient and effective AIP regime for major projects that the opportunity is provided for ensuring suppliers have a full, fair and reasonable opportunity to supply a large and diverse range of projects. We acknowledge the Government has set a threshold definition of a major project as \$500 million in Section 8(1). However in our assessment such a threshold has three limitations including:

- (a) According to the Commonwealth regulation impact statement (RIS), the number of projects over \$500 million (committed or under consideration) is currently 91. The same RIS suggests that there are some 23 projects over \$500 million that do not have a Commonwealth, State or Territory AIP plan. These 23 have a project value of \$32 billion.

Our analysis suggests that dropping the threshold to \$250 million would increase the number of projects by 25 to 30 and the value of projects subject to AIP's by more than \$12 billion. It is acknowledged that some of these projects between \$250 million and \$500 million would already be covered by State or Territory AIP arrangements. For example in WA the State Government for its AIP plans encourages a threshold of \$300 million. It is our assessment that the lower threshold would provide a manageable expansion of projects for AIP Authority consideration and do so at a time when lack of orders is the single most pressing issue confronting many suppliers.





- (b) The threshold does not include any provisions for special and extraordinary circumstances where Government may determine that a project below the \$500 million threshold is of such strategic national significance that cabinet has determined that it should therefore be designated a major project and require an AIP plan.
- (c) The threshold does not countenance circumstances where a project developer with a project of say \$150 million wishes to voluntarily avail themselves of the AIP plan process. Such action may be taken so as to demonstrate unequivocally that the project developer or company leading the project has a brand and/or reputation and/or way of doing business that is always about best practice procurement. Such an approach is about building its Australian supply network and improving the management systems and organisational capabilities of project design, construction, operation and through life support in a manner that is world class.

Given these limitations our submission proposes the following changes to the draft exposure legislation:

- The major project threshold should be reduced to \$250 million and remain that way, without indexation, for the remainder of the decade.
- A new Section 8 (11) be included in the form of a legislative instrument giving effect to the criteria for the Government, in special and extraordinary circumstances, to designate a project below the \$250million threshold as a major project subject to an AIP plan and other conditions as may be specified by Cabinet in a direction to the Authority.
- A new Section 8 (12) be included that facilitates a firm or project developer with a project over a threshold of \$50 million voluntarily requesting the AIP Authority to accept their project as a major project and to be covered by the provisions of this legislation through an approved AIP Plan. That this be a matter for the Authority to accept or reject on both the merits of the project and the workload of the Authority and the preparedness of the firm or project developer having the project appear in the AIP Authority's annual report as a case study of best practice consistent with the object of this legislation.
- By changing the threshold to \$250million there should be corresponding changes in projects bound by this legislation and also by the regulations surrounding EPBS projects. Under the provisions of Labor's Jobs Plan, projects over a threshold of \$2billion should, amongst other additional requirements, be required at their own expense to have an AIP officer embedded in the project as a condition to satisfy AIP plan requirements. We recommend that this threshold be reduced to \$1billion.





3. Our submission supports the intent of Part 1 Section 13 (Trigger Dates) which gives effect to the Government's intention to have AIP plans start earlier rather than later.
4. This was the basis of the national discussion about AIP plans being formulated at the environment impact stage of a project so that suppliers were not disadvantaged.

Only experience will tell as to whether these early trigger mechanisms work. In exercising persuasion to encourage early reporting the Authority should seek to ensure the trigger point occurs at a time when a project developer is entering into an agreement with a process-engineering group to scope the process and its requirements.

It should be a requirement of the Authority's annual report to inform the Minister as to whether further changes are required, either to the legislation or by way of regulation/legislative instrument, to ensure the earliest possible notification period for preparing AIP plans for major projects.

This arrangement must also now be extended to EPBS projects where the late stage of project development on matters such as standards and size of package has on occasion been a serious problem in ensuring "full, fair and reasonable" opportunity for Australian suppliers.

5. It was never intended for the new AIP arrangements to become another layer of red tape and regulation.

Our submission accepts that in the future, where a project developer enters a local industry participation agreement at the State or Territory level where the AIP conditions, reporting requirements, transparency and compliance arrangements are equal to or over and above those required by the Commonwealth in this legislation, then such arrangements should be accepted as meeting the required standards.

We therefore support the Part Two, Section 17 (5) exceptions criteria that will make this clear by way of a legislative instrument. However it needs to be clear in the legislative instrument envisaged, that where the Commonwealth has jurisdiction and the AIP Authority is not convinced that a State or Territory local



AIP agreement is above or equal to the Commonwealth standard (including in respect to Part Five section 57 consequences of non-compliance arrangements) then the Authority will ensure that an AIP plan is developed consistent with this draft exposure legislation with the changes proposed by our submission.

6. There is a major flaw in the current draft exposure legislation that needs to be rectified. Currently the project developer lodges an AIP plan with the Authority and the Authority through a confidential process of due diligence determines whether or not to approve the AIP plan.

**As it stands at the moment, the legislation provides no due process for suppliers and those who would benefit from participation in the project from providing input until after the fact during project implementation.**

We do not accept that this is consistent with the object of the legislation. Therefore Part two needs to be amended so that:

- (a) A summary of the developers draft AIP plan is posted on the Authority's website at the same time as the developer lodges a draft AIP plan with the Authority.
  - (b) A fifteen working-day period is allowed for suppliers and other parties to make objections and proposed changes to the draft AIP plan. This is particularly important in regard to the formulation of standards and reasonable size contestable packages so that Australian suppliers have, as is the intention of the legislation a full fair and reasonable opportunity to bid.
  - (c) These 15 days are over and above the time frame required for the Authority to make a "yes/no" determination of the plan
7. Section Two, parts 35 and 36 are critical to giving effect to the object of this legislation. They concern the primary and other obligations on the project proponent to give Australian suppliers a full, fair and reasonable opportunity to bid for work, and to ensure that undertakings given by the project developer which are then published in summary form to monitor compliance are in a form whereby the authority and project participants can be sure that undertakings are being adhered to.

In this respect it is our submission that the following changes are necessary:



- (a) A specific legislative instrument is necessary to give effect to 35e (1) and (2) concerning standards. The legislation should require that any departure from Australian standards is justified by the project developer in terms of demonstrating that it does not disadvantage local suppliers. Similarly any use of one set of international standards over another set of such standards needs the project developer to demonstrate why this still ensures the object of the legislation is met in terms of providing local suppliers with full, fair and reasonable opportunity. The legislation should be changed accordingly where appropriate and this intent be set out in the legislative instrument
- (b) Currently the requirement of breaking down packages so that they are contestable is not a legislative requirement, as is specified for Standards in Section 35(e). The referred to legislative instrument above should also require the burden of proof to be on the project developer to provide independent verifiable evidence that purports to demonstrate circumstances where packages of work are not broken down and why this is not contrary to the object of the legislation in terms of full, fair and reasonable opportunity.

The legislative instrument should also be clear that the Authority has the power to inform the project developer that an independent assessment may be required to verify whether appropriate packages of work have been made available or whether they have been avoided with arguments about modular or functional units. This is equivalent to the Authority “NOT” approving the AIP plan until such an evaluation is made. The Authority will clearly be mindful of the track record of project developers in relation to both standards issues and contestability issues.

Later in this submission we recommend that the Board of the Authority include The AIP Chief Procurement Engineer whose principle job (in addition to board duties) is to liaise with a project developer where so instructed by the Board and advise the Authority and its board of the suitability of undertakings given in draft AIP plans in relation to matters such as standards and appropriately sized contestable packages consistent with the object of the legislation to give local suppliers full, fair and reasonable opportunities.

Part Two Section 36 (d) refers to a legislative instrument made by the Minister which will determine the template in which information provided by the project developer on a website is provided with respect to the breakdown of project opportunities and expectations for domestic suppliers. That draft template,



including a series of specific case studies should be published on the Government website to allow a full and frank exchange between interested parties, including the ICN network, no later than May 31 2013. Only after this is done should such a template be finalised

8. Part 5 Section 57 is fundamental to giving effect to the object of this legislation. Effectively this section deals with the process by which a project developer is determined to be in breach of their undertakings or non compliant (with respect to Part 2,3 and/or 4 of this legislation) in following due process in formulating and giving effect to an AIP plan that gives suppliers full, fair and reasonable opportunities to participate.

The naming of a person/developer under this provision has the same effect as a firm that is found to be in breach of Equal Employment Opportunity Provisions and hence ineligible for a range of Government grants etc.

It is our submission that compliance breaches under Section 57 are likely to be rare and the due processes required to authenticate a developer being named as being in breach should be full, fair and reasonable. Naming in this way by the Authority should exclude the project developer from an appropriate range of Commonwealth grant and procurement opportunities and these exclusions and the time frame to which they apply should be specified at the time that the Authority comes formally into existence.

9. Part 8 Sections 85 to 89 deal with the appointment of an AIP Advisory Board to work with the AIP Authority CEO. Our submission proposes to change the composition of the board so that it consists of at least five members and not more than seven (as opposed to the current draft legislation where a minimum of 2 and a maximum of 4 members is proposed). Section 87 (b) should be amended accordingly the legislation should be amended accordingly.

A new section 87 (c) should be added to give effect to the following:

One of the five to seven member AIP Board members will be the AIP Chief Procurement Engineer (CPE) whose principle job (in addition to board duties) is to liaise with a project developer where so instructed by the Board and advise the Authority and its board of the suitability of undertakings given in draft AIP plans in relation to matters such as standards and appropriate sized contestable packages consistent with the object of the legislation to give local suppliers full, fair and reasonable opportunities. The Chief Procurement



Engineers recommendation will be central to the approval/non approval of draft AIP plans and may result in independent consultant evaluations being undertaken where required to test the veracity of project developer claims. Similarly in ensuring compliance with AIP undertakings, the CPE's recommendation will be a central consideration in Board decisions.

The Chief Procurement Engineer will have several decades of experience working in the procurement offices of major global project developers or EPCM's around the world. The CPE will also help ensure that the staff of the Authority, over time, better reflects staff with engineering procurement experience.

As was pointed out to us in the preparing of this submission one of the strengths of the Canadian Maritime Provinces policy (known as benefit plans) for AIP in the oil and gas sector is that the relevant policy authorities who deal with the global oil and gas firms developing projects have large contingents of procurement experts and engineers to help validate the veracity of developers preference for certain standards and package sizes consistent with legislation requiring full and fair opportunity for local suppliers.

10. In addition to the above, our submission supports the submission of ICNL and its comments on the role and functions of the board. We will expand on this in our submission to the Senate Economics Legislation Committee which is the appropriate forum for more detailed comments, given the Authority and its board will be responsible for key strategic resource allocation decisions. These include such matters as the deployment of supply advocates, and National Sector Managers. How this and other strategic issues are dealt with (particularly the liaison function with Enterprise Connect and Austrade) are key reasons why the Government chose to establish an AIP Authority and appoint a high powered board.

It is also critical to understand that an AIP Authority will not provide a better set of outcomes than what is provided in existing arrangements unless the Authority and its board work together with the ICN State and Territory Offices to form a cohesive national network of services and support. As the draft AIP National Framework agreement makes clear this capacity to leverage up support at different levels of Government and with different agencies is fundamental to the challenge of getting competitive and getting access. As the ICNL submission states:



*“The proposal for an Advisory Board (Section 85) whose function is to advise the Authority on performance, if requested, has, in our opinion, significant limitations. The Authority has oversight over a large number of significant projects and as such the performance of its functions and obligations has the potential to impact investment decisions and contractual outcomes across the nation.*

*A strong governance model which monitors performance, sets strategies and ensures best practice outcomes would be instrumental in achieving the purpose of the proposed Legislation. The governance model as proposed is unlikely to achieve those aims. ICNL recommends a formal board structure with overall responsibility for the performance of the Authority. Should this be not an available option within an Authority structure then ICNL recommends that a structure be adopted which does provide for an independent and accountable board.*

*ICNL was established in 1995 to provide the state, territory and New Zealand Industry Capability Network (ICN) operational offices with a range of supporting services and to provide leadership and coordination of national activities. The Australian Government’s Industry and Innovation statement requested that ICNL consider transitioning ICNLs operations into the Authority. The Board of ICNL considered this request at its regular meeting held on 27 February 2013 and agreed to support the transition.*

*This support was conditional on a number of key issues, but in particular, on the services provided by ICNL being provided to the same level by the Authority. Any legislation must allow for the Authority to provide these services at least to the level currently enjoyed by the operational offices.”*

The Manufacturing Alliance also supports those sections of the ICNL submission dealing with:

- a) Improving the reporting periods set out in sections 25 and 26 of the draft exposure legislation.
- b) Whether by legislative amendment or legislative instrument ensure that *“Under any approved plan the Authority require the plan owner to publish, in detail, all available and open contracts on a public, online, web portal together with a statement detailing the successful tenderer once the contract has been awarded.*





*The Authority should be charged with the requirement to observe, during the reporting period, the publication of these contracts and winning tenderers and to use these observations and the analysis thereof to ensure plan owners are in compliance with their approved AIP plans. Such an approach will provide “lead indicators” on the projects AIP obligations.”*

- c) *“With respect to tendering from Australian suppliers for goods and services it would be preferable that projects always test the Australian market for capability and capacity rather than requiring “the procurement entity to have a broad understanding of the capability and capacity of Australian entities ...”<sup>3</sup>. Furthermore we would expect that tendering does not exist only at the highest tier contract levels and that companies operating at second and third tier levels also get full, fair and reasonable opportunity to bid for work. In regards to the Initial Operational Phase<sup>4</sup> of a project we believe that the period of operation needs to be defined as part of a Legislative Instrument or within the plan approved by the Authority for each project.”*

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<sup>3</sup> For example Section 35 (1) (c)

<sup>4</sup> Subdivision D, Section 37 Part C